

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

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CLERK'S OFFICE  
U.S. DISTRICT COURT  
SAN JUAN, PR

GUILLERMO FERNANDEZ, et al.,

Plaintiffs,

v.

CIVIL NO. 98-1876 (RLA)

TAMAYO Y CIA, INC., et al.,

Defendant.

**MINUTES OF SETTLEMENT CONFERENCE**  
**HELD ON AUGUST 26, 1999 AND**  
**SCHEDULING FURTHER SETTLEMENT CONFERENCE**

At the SETTLEMENT CONFERENCE held on August 26, 1999, from 3:00 p.m. to 4:25 p.m. plaintiffs appeared through JOSE A. GALLART, ESQ., PEDRO SANTIAGO TORRES, ESQ. and MICHELLE PIRALLO-DICRISTINA, ESQ. Codefendants TAMAYO & CIA. and NATIONAL INS. CO. ("codefendants") were represented by LUIS M. ANGELET FRAU, ESQ.

Plaintiff was described as a 70 year old retired ophthalmologist who was working since 1994 earning \$2,000 per week for two weeks a month. The accident occurred in October 1997. In January 1998 DR. FERNANDEZ worked one week per month and ceased working altogether in May 1998.

The HOTEL LA PALMA, which ceased operations after hurricane Georges, had underground parking facilities. Plaintiff, DR. FERNANDEZ, fell while walking down the ramp rather than using the stairs that lead to the parking area. According to defendants,

s/c. jury Clerk  
MC

20 no

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1 there were signs all around advising patrons to use the stairs.  
2 However, they concede that sometimes some guests used the ramp.  
3

4 According to plaintiff, on the day of the accident the ramp was  
5 slippery due to oil slick plus rain. It is plaintiff's position  
6 that there were no signs posted at the time and that typically the  
7 patrons used the ramp to enter the parking garage.

8 Defendants contend that this is an assumption of risk case and  
9 that there were a number of signs posted on the day of the accident.

10 A controversy exists as to when the warning signs were posted  
11 as well as their location. Plaintiffs wish to examine the purchase  
12 receipts to corroborate this information. However, according to  
13 defendants the signs were prepared by TAMAYO employees. Plaintiffs  
14 contend that new signs with different text and different locations  
15 were put up after the accident. Further, they contend that the  
16 previous signs were not posted in adequate places.

17 Defendants are trying to trace the in-house accident report  
18 prepared by the parking attendant. Defendants will also supply  
19 plaintiffs with information regarding new signs.

20 Defendants furnished opposing counsel the transcript of the  
21 deposition of plaintiff, DR. FERNANDEZ, during the conference.  
22

23 Plaintiffs complained of not having received copy of the report  
24 of DR. GROVAS who examined plaintiff on July 30, 1999. According  
25 to defendants the delay was caused because plaintiff had not timely  
26

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1 signed the release for the medical records of DRS. DECROSI, GONZALEZ  
2 PEREZ and DORN. The authorization was not received until a few days  
3 before the deposition of DR. GROVAS. The medical records of DRS.  
4 PRECOSI and GONZALEZ-PEREZ have been received. Defendants suggested  
5 that DR. GROVAS render his report once DR. DORN's medical records  
6 are received. Plaintiffs objected to the expert's need for prior  
7 medical records in order to evaluate plaintiff's condition.  
8

9 The report of DR. GROVAS shall be provided to opposing counsel  
10 **no later than September 9, 1999.**

11 The depositions of DRS. GONZALEZ-PEREZ, PERCOSI and DORN will  
12 be taken in Miami on **September 16-17, 1999.** Plaintiffs are  
13 considering videotaping these depositions in lieu of live testimony  
14 at trial due to the cost involved in bringing expert witnesses to  
15 this jurisdiction. Defendants objected. Plaintiffs shall file a  
16 motion on this issue **no later than September 3, 1999.** Defendants  
17 shall respond **no later than September 10, 1999.**

18 Plaintiffs will take the depositions of ROGELIO QUINTANA,  
19 insurance adjuster, and ELVIRA TAMAYO, who prepared the accident  
20 report for the insurer, on **September 26, 1999.**  
21

22 Plaintiffs shall confirm in writing **no later than September 10,**  
23 **1999,** whether or not they will utilize MR. KOLTON as a witness in  
24 this case. The depositions of MR. KOLTON and MS. MARTI shall be  
25 taken on **September 30, 1999** in Orlando.  
26

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The deposition of engineer MIGUEL SANTIAGO MELENDEZ, plaintiffs' expert, shall conclude **no later than September 30, 1999.**

Settlement discussions were held. However, there is a dispute between the parties as to how to compute loss of income. Plaintiff contends that he is entitled to the amount his services represented to his employer whereas defendants contend that compensation is limited to plaintiff's actual loss of earnings.

Defendants shall serve a partial summary judgment motion on the computation of loss of income issue **no later than October 29, 1999.**

**SETTLEMENT CONFERENCE**

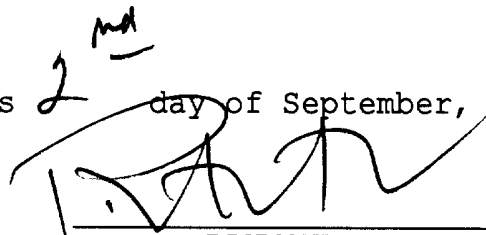
A SETTLEMENT CONFERENCE is hereby set for **January 12, 2000, at 3:30 p.m.**

**PRETRIAL CONFERENCE AND JURY TRIAL<sup>1</sup>**

The parties are reminded that the **PRETRIAL CONFERENCE** was scheduled for **January 20, 2000 at 10:00 a.m.** and the Proposed Joint Pretrial Order is due **on or before January 14, 2000.** **JURY TRIAL** remains set for **February 8, 2000, at 9:30 a.m.**

IT IS SO ORDERED.

San Juan, Puerto Rico, this 2<sup>nd</sup> day of September, 1999.

  
\_\_\_\_\_  
RAYMOND L. ACOSTA  
United States District Judge

<sup>1</sup> See Minutes of ISC Held on May 24, 1999... (docket No. 14).

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**SUMMARY OF DEADLINES AND SETTINGS**

**9/3/99** Deadline for plaintiffs to justify testimony of Miami experts via videotaped depositions.

**9/9/99** Deadline for report of DR. GROVAS.

**9/10/99** Deadline for plaintiffs to confirm whether or not will use MR. KOLTON as a witness.

**9/10/99** Deadline for defendants' opposition re: perpetuation of experts' testimony.

**9/16-17/99** Depositions of DRS. GONZALEZ-PEREZ, PERCOSI and DORN in Miami.

**9/26/99** Depositions of ROGELIO QUINTANA and ELVIRA TAMAYO.

**9/30/99** Deadline for conclusion of deposition of MR. SANTIAGO MELENDEZ.

**9/30/99** Depositions of MR. KOLTON and MS. MARTI in Orlando.

**1/12/2000** FURTHER SETTLEMENT CONFERENCE at **3:30 p.m.**

**1/14/2000** Deadline for filing JOINT PRETRIAL ORDER

**1/20/2000** PRETRIAL CONFERENCE at **10:00 a.m.**

**1/25/2000** Deadline for filing TRIAL BRIEF, PROPOSED JURY INSTRUCTIONS, PROPOSED VOIR DIRE and PROPOSED VERDICT FORM

\*\*\*\* Parties to mark evidence prior to trial

\*\*\*\* Parties to provide the court copy of all documents intended to be presented as evidence at trial.

**2/8/2000** JURY TRIAL at **9:30 a.m.**